(1)
(4)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO.3561 OF 2006

SINGLE BENCH

PETITIONER : Smt. Kunti Tiwari, aged about 42 years, W/o Shri S.B. Tiwari, Upper Division Teacher, Posted at Government Higher Secondary School Saragbundiya, District Korba (C.G.)

P.R. No. 3631/06
Presented by Shri Rahul Bilthare
dated 17/7/06

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
   Through: The Secretary, Schedule Caste and Schedule Tribe Welfare Department, D.K.S. Bhawan Raipur (C.G.)
2. The Commissioner,
   Schedule Caste and Schedule Tribe Welfare Department, Raipur C.G.
3. The Collector,
   Korba District Korba (C.G.)
4. The Assistant Commissioner,
   Tribal Welfare Department, District Korba (C.G.)
5. The Principal,

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(5) (2)

Government Higher Secondary School, Saragbundiya, District Korba (C.G.)

6. Vijay Kumar Soni,
Upper Division Teacher, Higher Secondary School Saragbundiya, District Korba, C.G.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

(44)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No. 3561/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	19.7.2006 Heard Shri Rakesh Pandey, Advocate for the petitioner. Shri Sumesh Bajaj, Government Advocate for the respondents/State on advance copy. By this petition, the petitioner, who is working as Upper Division Teacher (UDT) in Government Higher Secondary School, Saragbundiya, District Korba, has questioned the legality & correctness of her transfer order dated 7.7.2006 (Annexure P-1) issued under the signature of Under Secretary, Government of Chhattisgarh, Scheduled Caste & Scheduled Tribe Development Department, Raipur. The grounds of challenge of this order, as raised by the petitioner, are that the Secretary or the Under Secretary has no jurisdiction to pass the impugned transfer order, as the Counselling Committee is empowered to issue transfer orders under the Rationalization Scheme dated 1.6.2006, therefore, the impugned transfer order issued by respondent No.1 is without jurisdiction and nullity in the eyes of law. The State Government has already delegated the powers of transferring the teachers to counselling committee constituted at the State level under the rationalization scheme dated 1.6.2006 and the impugned transfer order has been issued in flagrant violation of the provisions contained in Paras 5 & 6 of this rationalization scheme. Perusal of impugned order Annexure P-1 whereby the petitioner has been transferred as also the rationalization scheme dated 1.6.2006 shows that the petition is misconceived, for the reasons that the impugned order under which the petitioner has been transferred has been passed on administrative grounds. This order has not been passed under the rationalization scheme	

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dated 1.6.2006 and the same has been passed by the Government in exercise of general powers to transfer its employees.

Perusal of rationalization scheme dated 1.6.2006 shows that where on account of transfers, promotions & retirements the numbers of teachers have become irrational in various schools looking to the numbers of students i.e. where on account of above mentioned reasons in one school numbers of teachers have become less 1 or 2 or where the numbers of teachers have exceeded more than the required numbers of teachers, in that case the concerned department, as envisaged in the scheme, will constitute a counselling committee and after collecting information from the various higher secondary schools or middle schools or primary schools, the concerned committee shall rationalize the numbers of teachers in each schools looking to the numbers of students. It has been envisaged that the committee is to ensure that in no primary school remain less than two teachers, in case of middle school not less than three teachers, in case of high school not less than four teachers and in case of higher secondary school not less than six teachers.

As has been mentioned earlier that the impugned order has been passed under the administrative powers of the Government on administrative grounds and this order has nothing to do with the rationalization scheme dated 1.6.2006. The Government is always empowered to transfer its employees and the introduction of rationalization scheme does not create any bar that the concerned department of the State Government is not empowered to transfer its teachers in the administrative exigency or in the public interest. Moreover, a bare perusal of the petition shows that it has not been mentioned in the petition that by this transfer in a particular higher secondary school numbers

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of teachers has become less than the required numbers of teachers or numbers of teachers have exceeded looking to the numbers of students. Therefore, the petition of the petitioner is not maintainable for the reasons that;

(1) the order impugned has been passed under the general powers of the Government to transfer its employees on administrative ground and it has not been passed under the said scheme i.e. rationalization scheme dated 1.6.2006.

(2) in the petition it has not been alleged that on account of this transfer the principle enunciated in the rationalization scheme has been violated i.e. on account of this transfer the numbers of teachers have become less than the required numbers of teachers under the rationalization scheme or have exceeded in any particular school contrary to the rationalization scheme.

(3) The areas of operation of the rationalization scheme dated 1.6.2006 and of general powers of transfer of State Government are different.

However, if any such instance comes to the notice of the petitioner, then she will be at liberty to make a representation to the authority concerned.

In view of the above, the petition stand dismissed.

Consequently, M.(W.)P. No.2755/06 also stands dismissed.

Sd/-
L.C. Bhadoo
Judge

roshanlr

P.T.O.